POLICY NOTE

THE CHARITIES (DISCLOSURE OF INFORMATION TO DESIGNATED BODIES) (SCOTLAND) ORDER 2020

SSI 2020/435

The above instrument was made in exercise of the powers conferred by section 25(2)(a) of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act"). The instrument is subject to negative procedure.

Purpose of the instrument: to designate public bodies and office holders to whom the Scottish Charity Regulator ("OSCR") may disclose information which is otherwise subject to a restriction on disclosure for the purpose of enabling or assisting that body or office holder to exercise any of its functions. Those bodies and office holders designated, include chief constables of police forces, prosecution services and other regulators.

Policy Objectives

Section 24(1) of the 2005 Act allows OSCR to disclose any information to a public body or office holder for any purpose connected with the exercise of OSCR's functions, or for the purpose of enabling or assisting that body or office holder to exercise any of its functions. Section 24(4) provides that this ability to disclose information is subject to any obligation as to secrecy or other restriction on disclosure of the information however imposed, unless section 25 provides otherwise.

Section 25(1) provides that no obligation as to secrecy or other restriction on disclosure of information however imposed prevents OSCR from disclosing any information to a "designated body" for any purpose connected with the exercise of OSCR's functions, or for the purpose of enabling or assisting that body or office holder to exercise any of its functions. Section 25(2)(a) of the allows the Scottish Ministers to designate any public body or office holder for these purposes. This instrument designates a number of bodies and office-holders, including chief constables of police forces, heads of prosecution services and other regulators.

The list includes the Commission for Equality and Human Rights, known as the Equality and Human Rights Commission, and Social Care and Social Work Improvement Scotland, which is more commonly known as the Care Inspectorate.

An example of a restriction on disclosure which will be disapplied is on information obtained by OSCR for the purposes of its inquiries under the 2005 Act. Section 28 of the 2005 Act allows OSCR to carry out inquiries about charities and section 29 gives OSCR the power to require a person to provide documents or information to it for the purposes of those inquiries. OSCR is prohibited from disclosing those documents or information except for the purposes of its own inquiry. This instrument will allow OSCR to share information it has obtained under section 29 of the 2005 Act with the police, prosecution services, or other regulators where it considers it appropriate to do so.

Consultation

OSCR was consulted and were supportive of the designations. An article 36(4) form was submitted to the Information Commissioner's Office, who indicated that no further consultation with them was required. Given the narrow focus of the instrument wider consultation was not required.

Impact Assessments

A Business and Regulatory Impact Assessment and an Equalities Impact Assessment have not been undertaken given the narrow focus of the instrument.

Financial Effects

The Cabinet Secretary for Communities and Local Government confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Local Government and Communities Directorate
December 2020